



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19956513

Date: JAN. 3, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mathematics lecturer and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

² To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue working "as a full-time Lecturer of Mathematics in the Department of Mathematics at [redacted] University, [redacted]"⁵ He further stated: "At [redacted] I provide classroom instruction and consulting to the students, and conduct academic research. Besides my own academic research, I also currently have students conducting research work under my supervision."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor in the United States. He was informed that he should submit a "detailed description of the proposed endeavor and why it is of national importance." The Petitioner was also asked to present documentary evidence that establishes his proposed endeavor's national importance.⁶

In response to the Director's RFE, the Petitioner stated: "I study [redacted] - loosely speaking. I study [redacted] with computer numerical simulations. I work on the accuracy, efficiency, and parallelization of numerical methods." He also described three of his previous research

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Mathematics from the University [redacted] in August 2007.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ Furthermore, the Director noted that the evidence relating to the Petitioner's proposed classroom instruction work was insufficient to show that his undertaking has broader implications for his field, as opposed to being limited to his students at [redacted]. While the Petitioner's academic work as a lecturer has merit, the record does not demonstrate that his instructional activities offer benefits that extend beyond his university to impact the field of applied mathematics more broadly. Likewise, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

projects and discussed his intentions for building upon that work. He explained that he plans to develop numerical simulations to understand the dynamics of [redacted] in a [redacted] devise a boundary integral method to compute the [redacted] interaction of [redacted] particles, and create a graphics processing unit implementation of his algorithm for [redacted]

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not submitted supporting evidence showing “the broader implications of your future endeavor within your field or how much research will be its focus.” Additionally, the Director indicated that without sufficient documentation indicating “the broader impact of [the Petitioner’s] future research or instructional work upon the field of mathematics or [redacted] research,” he had “not established the potential prospective impact of [his] proposed work as a lecturer or researcher.” The Director further noted that the Petitioner had not shown that the potential prospective impact of his proposed endeavor “has national or global implications” within the field.

The Petitioner argues on appeal that his response to the RFE “described the three research projects I am currently engaged in. Given that my past publications are consistently cited by my peers across the country – citation report attached, it can be anticipated that publications resulting from my current endeavors will receive similar interests from researchers in my field.” He further contends that “citations by scholars across the United States constitute national importance.” The Petitioner’s citation record in mathematics research relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific research endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.⁷

With the appeal, the Petitioner submits an April 2021 letter from the Provost and Vice President for Academic Affairs at [redacted] offering the Petitioner “a one-year appointment as Lecturer in Mathematics,” but there is no discussion relating to his proposed research projects. In addition, the Petitioner provides a July 2021 letter from the Chair of the Mathematics Department at [redacted] indicating that the Petitioner’s appointment involves both teaching and research. This letter further states that the Mathematics Department plans to “endorse [the Petitioner’s] future bids for research grants to government agencies, so that, if awarded, he can serve in the role of a principal investigator,” but it does not identify his specific research projects or discuss their national importance under the *Dhanasar* framework.

The record includes additional letters of support from scholars at [redacted] University, University [redacted] [redacted] Institute of Technology, and University [redacted] These letters focus on the Petitioner’s past research efforts rather than the national importance of the three projects that the Petitioner proposes to undertake.

⁷ While citations show that a researcher’s work has attracted the attention of those who have cited to his findings, they do not constitute evidence that his proposed research projects have national importance. For example, in *Dhanasar*, the petitioner presented “probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests. He also provided media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development. The letters and the media articles discuss . . . the strategic importance of U.S. advancement in researching and developing these technologies.” *Id.* at 892.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to continue his applied mathematics research, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to impact U.S. technological interests or the field of applied mathematics more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s research projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.